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Director's Office

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Doug Harrington**  
**Marion County, Iowa**

ADMINISTRATIVE CONSENT  
ORDER

NO. 2012-AQ- 10  
NO. 2012-SW- 11

TO: Doug Harrington  
1561 Highway T17  
Harvey, Iowa 50119

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Doug Harrington for the purpose of resolving the air quality and solid waste disposal violations which occurred at property located at the closed American Coals Site #5 landfill along 215<sup>th</sup> Avenue, Harvey, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements: Relating to legal requirements:**

Malia Schepers, Field Office 5  
Iowa Department of Natural Resources  
491 SW 7<sup>th</sup> Street, Suite I  
Des Moines, Iowa 50309  
Phone: 515/725-0268

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary

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to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

Mr. Harrington neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. On May 19, 2011, Malia Schepers, DNR Field Office 5 environmental specialist, conducted a routine inspection at the closed American Coals Site #5 located at 215<sup>th</sup> Avenue, Harvey, Iowa. This property is owned by Paul and Joyce Harrington. During Ms. Schepers' inspection she observed a large pile of construction and demolition waste, including metal debris and tree trimmings. Ms. Schepers also noted a large pile of tires behind a pile of concrete rubble.

2. On May 24, 2011, DNR Field Office 5 issued a Notice of Violation letter to Paul and Joyce Harrington as the property owners. The letter informed Mr. and Mrs. Harrington of the solid waste violations observed during the May 19 inspection. The letter explained that the solid waste observed on site must be disposed of at a permitted landfill. The letter explained that the solid waste could not be burned. The letter required that the solid waste must be properly disposed of by June 24, 2011.

3. Following the issuance of the letter, during the week of May 30, 2011, Ms. Schepers received a telephone call from Doug Harrington, Paul Harrington's son. Doug Harrington explained that he was the manager of the site and that he had seen the Notice of Violation letter. Doug Harrington agreed to remove the tires and the other solid waste as requested in the letter.

4. During the week of June 20, 2011, Ms. Schepers received a telephone call from Doug Harrington requesting more time to remove the solid waste. An extension was given until July 8, 2011 to remove the solid waste and the tires.

5. On July 14, 2011, Ms. Schepers contacted Doug Harrington to inform him that she would be going to the American Coals Site to observe the cleanup of the area. Mr. Harrington stated that the solid waste was gone and that some of the tires had been removed and the remainder of the tires would be removed on July 20, 2011. Ms. Schepers visited the site and observed that the solid waste, including the construction and demolition waste and the tree trimmings had been burned.

6. On July 19, 2011, DNR Field Office 5 issued a Notice of Violation letter to Doug Harrington for the open burning violations observed on July 14, 2011. The letter required Mr. Harrington that the remaining ashes and debris must be disposed

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of at a permitted landfill no later than July 31, 2011. Mr. Harrington was informed the matter was being referred for further enforcement.

7. The week following the issuance of the Notice of Violation letter, Mr. Harrington contacted Ms. Schepers. Mr. Harrington explained that the pile of ash had been used as fill in a pasture. Mr. Harrington stated that the scrap metal had been removed from the pile and stored in a truck to be recycled. On July 29, 2011, Mr. Harrington sent Ms. Schepers an email and pictures detailing how the cleanup had been completed.

8. On September 13, 2011, Ms. Schepers returned to the site and verified that the cleanup had been completed.

**IV. CONCLUSIONS OF LAW**

Mr. Harrington neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On July 14, 2011, DNR Field Office 5 personnel observed that the construction and demolition waste and the tree trimming debris had been burned at the closed American Coals Site #5 located at 215<sup>th</sup> Avenue, Harvey, Iowa. Doug Harrington had been notified in a letter dated May 24, 2011 that the debris could not be burned. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On May 19, 2011, DNR Field Office 5 personnel observed that construction and demolition waste and the tree trimming debris had been disposed of at the closed American Coals Site #5 located at 215<sup>th</sup> Avenue, Harvey, Iowa. Mr. Harrington later burned the debris rather than disposing of it at a permitted landfill. The above facts demonstrate noncompliance with this provision.

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**V. ORDER**

THEREFORE, it is hereby ordered and Doug Harrington agrees to do the following:

1. Doug Harrington shall immediately cease all open burning unless the burning is exempted by regulation;
2. Doug Harrington shall immediately cease all improper waste disposal; and
3. Doug Harrington shall pay a penalty of \$1,500.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$1,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the solid waste has allowed Mr. Harrington to save time and money. It is estimated that Mr. Harrington avoided tipping fees at the landfill of approximately \$700.00. Based on the above considerations, \$700.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized

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by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$400.00 is assessed for this factor.

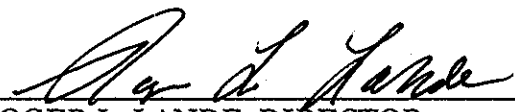
Culpability – Doug Harrington has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Mr. Harrington was informed that he could not burn the solid waste debris and yet he burned this waste. Based on the above considerations, \$400.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

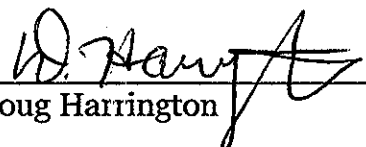
This administrative consent order is entered into knowingly and with the consent of Doug Harrington. For that reason, Doug Harrington waives the right to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18<sup>th</sup> day of  
April, 2012.

  
\_\_\_\_\_  
Doug Harrington

Dated this 16 day of  
April, 2012.

Barb Stock (Con 10-6 Marion County); Kelli Book; DNR Field Office 5; VI.C and VII.C.1